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10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 FIRST CITIZENS BANK & TRUST ) Case No. 13cv898 AJB (WMc)  
13 COMPANY, )  
14 Plaintiff, ) ORDER SUA SPONTE  
15 v. ) REMANDING TO STATE COURT  
16 PAUL E. WINTER, et al., ) FOR LACK OF SUBJECT MATTER  
17 Defendants. ) JURISDICTION  
[Doc. No. 1]

18 On April 15, 2013, Defendant Paul E. Winter, acting pro se, filed a notice of  
19 removal, (Doc. No. 1). The notice of removal seeks to remove an unlawful detainer  
20 proceeding initiated in San Diego Superior Court by First Citizens Bank & Trust  
21 Company ("First Citizen"), the Plaintiff in this action. (Doc. No. 1.) For the reasons set  
22 forth below, the Court finds the Defendant has failed to demonstrate either federal  
23 question or diversity jurisdiction exist and therefore sua sponte REMANDS the action to  
24 San Diego Superior Court, North County Division.

25 **DISCUSSION**

26 An action is removable to a federal court only if it could have been brought there  
27 originally. *See* 28 U.S.C. § 1441(a). As set forth in the notice of removal, Mr. Winter  
28 alleges that the Court has subject matter jurisdiction over the present action based on

1 First Citizen's defective notice of the unlawful detainer action in state court. (Doc. No.  
 2 1.) Mr. Winter contends that the notice given by First Citizen failed to comply with "The  
 3 Protecting Tenants at Foreclosure Act, 12 U.S.C. §5220," however, this United States  
 4 Code section actually refers to the "Assistance to Homeowners" section of the Troubled  
 5 Assets Relief Program ("TARP"). It appears that Mr. Winter is relying on a section of  
 6 TARP under the Historical and Statutory Notes, entitled "Effect of Foreclosure on  
 7 Preexisting Tenancy" which states:

8 (a) In general.--In the case of any foreclosure on a federally-related mort-  
 9 gage loan or on any dwelling or residential real property after the date of  
 10 enactment of this title [May 20, 2009], any immediate successor in interest  
 11 in such property pursuant to the foreclosure shall assume such interest  
 12 subject to--

13 (1) the provision, by such successor in interest of a notice to vacate to  
 14 any bona fide tenant at least 90 days before the effective date of such  
 15 notice . . .

16 (b) Bona fide lease or tenancy.--For purposes of this section, a lease or  
 17 tenancy shall be considered bona fide only if--

18 (1) the mortgagor or the child, spouse, or parent of the mortgagor  
 19 under the contract is not the tenant . . .

20 See Pub. L. 111-22, Div. A, Title VII, § 702, May 20, 2009, 123 Stat. 1660, as amended  
 21 Pub. L. 111-203, Title XIV, § 1484(1), July 21, 2010, 124 Stat. 2204. This provision  
 22 does not apply to Mr. Winter. Mr. Winter was a co-borrower on the loan, a mortgagor,  
 23 and therefore not entitled to bona fide tenant status which requires 90 days notice before  
 24 the effective date of a notice to vacate.

25 Furthermore, the state court complaint initiated by First Citizen is an unlawful  
 26 detainer action seeking to recover possession of the property located at 2525 Reed Road,  
 27 Escondido, California 92027 (the "Property"). The complaint does not allege any federal  
 28 causes of action. Thus, the Court finds Mr. Winter has failed to demonstrate that this  
 Court has subject matter jurisdiction over this action. See *Caterpillar Inc. v. Williams*,  
 482 U.S. 386, 392 (1987) (stating that the presence or absence of federal question  
 jurisdiction is governed by the "well-pleaded complaint rule," i.e., federal jurisdiction  
 exists only when a federal question is presented on the face of the plaintiff's properly  
 pleaded complaint) (internal citations omitted); see also *Indymac Federal Bank, F.S.B. v.*

1 *Ocampo*, No. 09-2337, 2010 WL 234828, \*2 (C.D. Cal. Jan. 13, 2010) (finding no  
2 subject matter jurisdiction where complaint stated only an unlawful detainer claim).


3 The Court also lacks diversity jurisdiction over this action because the state court  
4 complaint clearly states that First Citizen, the Plaintiff in this action, is the successor-in-  
5 interest to Temecula Valley Bank, which is authorized to do business in California and  
6 the Defendants are residents of California. (Doc. No. 1, Ex. A at 5.) Furthermore, the  
7 state court complaint is labeled as a limited civil case, wherein First Citizen seeks less  
8 than \$10,000. (*Id.*) Accordingly, the Court finds it lacks diversity jurisdiction over the  
9 instant matter because the parties are not completely diverse and the amount in contro-  
10 versy does not exceed \$75,000. *See* 28 U.S.C. § 1332 (stating that a district court has  
11 diversity jurisdiction over any civil action between citizens of different states so long as  
12 the amount in controversy exceeds \$75,000, exclusive of interest and costs).

13 **CONCLUSION**

14 Based upon the foregoing, the Court finds this unlawful detainer action does not  
15 raise a federal question and the Court lacks diversity jurisdiction over the matter. As  
16 such, the Court *sua sponte* REMANDS the action to San Diego Superior Court, North  
17 County Division. The Clerk of Court is instructed to remand the case and close the file.

18 IT IS SO ORDERED.

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20 DATED: April 18, 2013

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22 Hon. Anthony J. Battaglia  
23 U.S. District Judge  
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